

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff	)	
	)	Civil Action No. _____
v.	)	
	)	CONSENT DECREE BETWEEN
	)	THE UNITED STATES OF
KENTUCKY UTILITIES COMPANY,	)	AMERICA AND KENTUCKY
	)	UTILITIES COMPANY
Defendant.	)	
_____	)	

**I. BACKGROUND**

A. Plaintiff, the United States of America ("United States"), through the Attorney General, at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), is concurrently filing a civil complaint ("Complaint") against Kentucky Utilities Company ("KU") pursuant to the Clean Water Act ("CWA"), 33 U.S.C. §§ 1251-1387, seeking civil penalties for two discharges of oil into or upon navigable waters of the United States or adjoining shorelines, and for failure to timely prepare and submit a Facilities Response Plan ("FRP"). The Complaint alleges that KU is liable for the discharge of diesel fuel from the E.W. Brown Generating Station into Cedar Branch Creek, a tributary of the Kentucky River, beginning on October 2, 1999, in violation of Sections 301(a) and 311(b)(3) of the CWA, 33 U.S.C. §§ 1311(a), 1321(b)(3). The Complaint further alleges that KU is liable for the discharge of oil from the E.W. Brown Generating Station into Herrington Lake in January of 2001, in violation

of Sections 301(a) and 311(b)(3) of the CWA, 33 U.S.C. §§ 1311(a), 1321(b)(3). The 2001 spill was not reported to the National Response Center in violation of Section 103(a) of the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. Section 9603(a). Finally, the Complaint alleges that KU failed to timely prepare and submit an FRP for the E.W. Brown Generating Station, in violation of Section 311(j) of the CWA, 33 U.S.C. § 1321(j), 40 C.F.R. § 112.20. KU has performed corrective action to address the effects of the two discharges on the environment. Recently, KU submitted a facility-specific FRP to EPA, which EPA has determined meets the requirements of 33 U.S.C. § 1321(j) and its implementing regulations.

On March 17, 2004, EPA served on KU an Information Request pursuant to Section 308 of the CWA, 33 U.S.C. Section 1318 et seq. On May 3, 2004, KU submitted its Response to the Information Request, in which it requested that it not be required to respond to Requests Nos. 22 through 26. On May 28, 2004, KU was informed that responses to Requests Nos. 22 through 26 were required. On June 16, 2004, KU submitted its Supplemental Responses to the Information Request, containing the responses to Requests Nos. 22 through 26.

B. To resolve KU’s civil liability for the Claims asserted in the Complaint, KU will pay a total civil penalty of \$228,569 to the United States, plus interest accruing at the rate provided by 28 U.S.C. Section 1961(a) from the date of lodging; install the Supplemental Environmental Project (“SEP”) described in Appendix A at an estimated cost of approximately \$750,000; and satisfy all other terms of this Consent Decree.

C. This Consent Decree is entered into between the Parties for the purpose of settlement and it does not constitute an admission or finding of any violation of federal or state law. This Decree may not be used in any proceeding of any type as evidence or proof of any fact or as evidence of the violation of any law, rule, regulation, or Court decision, except in a proceeding to enforce the provisions of this Decree.

D. The Parties agree, and this Court by entering this Consent Decree finds, that this Consent Decree and these civil penalties solely address the acts and omissions of KU alleged in the Complaint and do not address the alleged acts and omissions of any other person or entity.

E. The Parties agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid litigation between the Parties related to the Claims in the Complaint, and that the settlement embodied by this Consent Decree is fair, reasonable, and in the public interest.

F. This Consent Decree constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree, and the Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

THEREFORE, with the consent of the Parties to this Consent Decree, it is ORDERED, ADJUDGED AND DECREED:

## **II. JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this action and the Parties pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and 33 U.S.C. §§ 1319(b), 1321(b)(7)(E).
2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b), 1395(a), and 33 U.S.C. §§ 1319(b), 1321(b)(7)(E), because the violations alleged in the Complaint are alleged to have occurred in, and Defendant conducts business in, this judicial district.
3. For the purposes of this Consent Decree and the underlying Claims of the United States, KU waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. KU consents to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## **III. PARTIES BOUND**

4. This Consent Decree applies to and is binding on the United States, and on KU and any successors.
5. Any transfer of ownership or operation of the E.W. Brown Generating Station to any other person must be conditioned upon the transferee's agreement to undertake the obligations required by this Decree, as provided in a written agreement between KU and the proposed transferee, enforceable by the United States as third-party beneficiary of such agreement. At least 30 days prior to such transfer, KU shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Region 4 and the United States Department of Justice, in accordance with Section XV of this Decree (Notices). Any attempt to transfer ownership or

operation of the E.W. Brown Generating Station without complying with this Paragraph constitutes a violation of this Decree. No transfer of ownership or operation of the E.W. Brown Generating Station, whether in compliance with this Paragraph or otherwise, shall relieve KU of its obligation to ensure that the terms of this Decree are implemented.

6. KU shall provide a copy of this Consent Decree to the following officers: Vice President of Regulated Generation, Kentucky Utilities Company; General Manager of E.W. Brown Generating Station; Controller, Kentucky Utilities Company; Director, Environmental Affairs, LG&E Energy Services, Inc.; Manager, System Laboratories and Environmental Compliance, LG&E Energy Services, Inc.; Manager, Environmental Programs, LG&E Energy Services, Inc.; Senior Engineer, E.W. Brown Generating Station; Senior Plant Chemist (Environmental Coordinator), E.W. Brown Generating Station; Maintenance Manager, E.W. Brown Generating Station; Production Manager, E.W. Brown Generating Station; and Commercial Manager, E.W. Brown Generating Station, as well as any contractor retained to implement the SEP. KU shall condition any such contract upon performance of the SEP in conformity with the terms of this Consent Decree.

7. In any action to enforce this Consent Decree, KU shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree, unless such failure to act constitutes a force majeure as provided in Section XII.

#### **IV. DEFINITIONS**

8. Unless otherwise expressly provided herein, the terms used in this Consent Decree that are defined in the CWA, or the regulations promulgated thereunder, shall have the meaning assigned to them in the CWA or in such regulations. Whenever terms listed below are used in this Consent Decree or the Appendix, the following definitions shall apply:

- a. "Appendix" shall mean Appendix A ("Supplemental Environmental Project") attached to this Consent Decree and all exhibits attached to Appendix A.
- b. "Claims" shall mean the discharge of diesel fuel into or upon Cedar Branch Creek in Mercer County, Kentucky, beginning on October 2, 1999; the discharge of oil upon Herrington Lake in Mercer County, Kentucky, beginning on or about January 8, 2001; and KU's failure to timely submit an FRP, all as described with particularity in the Complaint filed by the United States in this case.
- c. "Consent Decree" or "Decree" shall mean this document and the Appendix. In the event of a conflict between this document and the Appendix, this Decree shall control.
- d. "CWA" shall mean the Clean Water Act (CWA), 33 U.S.C. §§ 1251-1387.
- e. "Day" shall mean a calendar day unless expressly stated to be a working day. "Working Day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time pursuant to this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next Working Day.

- f. “DOJ” shall mean the United States Department of Justice.
- g. “EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies.
- h. “E.W. Brown Generating Station” shall mean the generation facility located on U.S. Highway 342 – Curdsville Road, in Burgin, Mercer County, Kentucky 40310.
- i. “KU” shall mean Kentucky Utilities Company, the defendant in this action, and its successors and assigns.
- j. “OPA” shall mean the Oil Pollution Act of 1990 (OPA), 33 U.S.C. §§ 2701-2761.
- k. “Paragraph” shall mean a portion of this Consent Decree or the Appendix identified by an Arabic numeral.
- l. “Parties” shall mean the United States and KU.
- m. “RCRA” shall mean the Resource, Conservation and Recovery Act.
- n. “Section” shall mean a portion of this Consent Decree and Appendix identified by a capitalized Roman numeral.
- o. “Submit” shall mean any of the following: (1) place in certified mail in a properly addressed envelope with sufficient postage; (2) tender to an overnight courier in a properly addressed envelope, and prepay the delivery fees; or (3) hand deliver and obtain signature of recipient.
- p. “Subparagraph” shall mean a portion of this Consent Decree and Appendix identified by an upper or lower case letter.

q. “United States” shall mean the United States of America, including its departments, agencies, and instrumentalities.

**V. GENERAL PROVISIONS**

9. Compliance with Applicable Law. This Consent Decree in no way affects or relieves KU of its responsibility to comply with applicable federal, state, and local laws, regulations, and permits. KU shall perform all work required by this Consent Decree in compliance with the requirements of all applicable federal, state, and local laws, regulations, and permits. Except as expressly provided herein, the Parties agree that compliance with this Consent Decree shall be no defense to any actions commenced by the United States pursuant to federal, state, and local laws, regulations, and permits. This Consent Decree is not, and shall not be construed as, a permit issued pursuant to any federal, state, or local statute or regulation.

10. Permits. KU shall submit timely and complete applications for, and otherwise diligently seek to obtain, any and all approvals, permits, or modifications to existing permits from federal, state, or other governmental entities necessary to perform work that this Consent Decree requires. The Parties understand and agree that KU is required to obtain a permit from the Kentucky Division of Water prior to commencing construction and installation of the SEP described in Appendix A.

**VI. SUPPLEMENTAL ENVIRONMENTAL PROJECT**

11. KU shall implement a SEP, installing and maintaining two additional oil-water separators at the E.W. Brown Generating Station, under this Consent Decree as described in the Appendix of this Consent Decree.



12. No later than 180 Days from the date that the Kentucky Division of Water issues the permit authorizing construction, KU shall perform and complete the installation phase of the SEP outlined above and detailed in the Appendix. Within 180 Days after KU has completed the installation phase of the SEP, and then no more than once every 180 Days after that, KU shall conduct semi-annual maintenance activities on the SEP as detailed in the Appendix and its exhibits.

13. KU is responsible for the satisfactory completion of the SEP in accordance with the requirements of this Decree. "Satisfactory completion" means that KU shall complete the work in accordance with all specifications for the project as described in the Appendix and shall not spend less than the amount set forth in Paragraph 15.

"Satisfactory completion" also means that KU shall conduct semi-annual maintenance activities for the SEP as described in the Appendix.

14. With regard to the SEP, KU certifies the truth and accuracy of each of the following:

a. That all cost information provided to EPA in connection with EPA's approval of the SEP is complete and accurate and represents a fair estimate of the costs necessary to implement the SEP;

b. That, as of the date of executing this Decree, KU is not required to perform or develop the SEP by any federal, state, or local law or regulation, nor is KU required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

c. That the SEP is not a project that KU was planning or intending to construct, perform or implement other than in settlement of the Claims resolved in this Decree; and

d. That KU will not receive any reimbursement for any portion of the SEP from any other person.

15. In implementing the SEP, KU shall spend not less than a total amount of \$750,000 to install the SEP; and shall spend not less than \$40,000 on an annualized basis for a period of 10 years to maintain the SEP as described in the Appendix and Exhibit 2, for a total amount of not less than \$400,000.

16. KU shall submit a SEP Installation Completion Report containing the following information within 30 Days of final completion of the installation phase of the SEP:

a. A detailed description of the SEP as implemented;

b. A description of any problems encountered in completing the SEP and the solutions thereto;

c. An itemized list of all eligible SEP costs;

d. Certification that the SEP has been fully implemented pursuant to the provisions of this Decree and in accordance with the Timeline for Completion attached as Exhibit 3 to Appendix A; and

e. A description of the environmental and public health benefits resulting from implementation of the SEP (quantifying the benefits and pollution reductions, if feasible).

17. EPA may, in its sole reasonable discretion, require information in addition to that described in the preceding Paragraph, in order to determine the satisfactory completion of the SEP or the eligibility of SEP costs.

18. After receiving the SEP Installation Completion Report, the United States shall notify KU whether or not KU has satisfactorily completed the installation phase of the SEP. If the SEP has not been satisfactorily completed in accordance with all schedules, or if the amount expended on performance of the SEP is less than the amount set forth in Paragraph 15, above, Stipulated Penalties may be assessed under Section X of this Consent Decree.

19. Disputes concerning the satisfactory performance of the SEP and the amount of eligible SEP costs may be resolved under Section XIII of this Consent Decree (Dispute Resolution). No other disputes arising under this Section shall be subject to Dispute Resolution.

20. Each submission required under this Section shall be signed by an official with knowledge of the SEP and shall bear the certification language set forth in Paragraph 29, below.

21. Any public statement, oral or written, in print, film, or media, made by KU making reference to the SEP under this Decree shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action: United States v. Kentucky Utilities Co., E.D. Ky., Civil Action # \_\_\_\_\_, taken on behalf of the United States Environmental Protection Agency under the Clean Water Act." This obligation applies to any form of public notice pertaining to the SEP,

including any invitation to a media event, or any oral comments or statements made at a media event.

## **VII. PAYMENT OF CIVIL PENALTIES**

22. Based on the nature of the alleged violations, KU's agreement to perform the SEP described in Section VI and the Appendix to this Consent Decree, and other relevant factors, KU shall pay the United States a civil penalty of \$228,569, together with interest accruing at the rate provided by 28 U.S.C. Section 1961(a) from the date of lodging, within 30 Days ("the due date") after the Effective Date of the Decree.

23. KU shall make the payment described in Paragraph 22 in the manner specified in Section XI (Payment and Related Matters) of this Consent Decree.

24. If the payment required by Paragraph 22 of this Decree is not paid when due, KU shall pay stipulated penalties in accordance with Section X (Stipulated Penalties), and interest in accordance with Section XI (Payment and Related Matters).

## **VIII. REPORTING REQUIREMENTS**

25. Progress Reports. During the pendency of this Consent Decree and for a period of 10 years after the date of completion of the installation phase of the SEP, notwithstanding the termination of this Consent Decree as defined in Section XXII, KU shall submit certified Progress Reports to EPA in accordance with the requirements of this Paragraph. Additionally, if requested by EPA, KU shall meet with EPA to discuss KU's compliance with the terms of this Decree. Beginning 180 Days after the Effective Date of this Decree, KU shall submit a progress report to EPA Region 4. Progress Reports must be submitted every 180 Days thereafter until, and including, the reporting

period during which this Consent Decree is terminated as defined in Section XXII. KU shall submit a progress report every 365 Days thereafter until, and including, the tenth year from the Date of completion of the installation phase of the SEP. Each Progress Report shall describe:

a. A discussion of KU's progress in obtaining the permit to construct from the Kentucky Division of Water and in constructing the oil-water separators SEP as described in Section VI of this Consent Decree and the Appendix, including, at a minimum, a narrative description of activities undertaken, compliance with the schedules or milestones set forth in the Appendix and its exhibits, and a summary of costs incurred since the previous report;

b. Any failure to meet the requirements of the Decree that occurred or remained unresolved at any time during the reporting period, and the reasons for any such failure to comply;

c. A summary of all actions taken or planned to correct failures to comply with this Consent Decree during the reporting period;

d. An estimate of the time period needed by KU to complete the remaining activities identified in the Appendix and its exhibits; and

e. The amount of stipulated penalties and interest, if any, accrued as of the last day of the reporting period as a result of noncompliance with the Consent Decree, including:

1. A description of each noncompliance and the date the noncompliance began and ended, if applicable;

2. A summary of the calculation of the amount of the stipulated penalty for each noncompliance as of the last day of the reporting period;
  3. A description of each noncompliance for which KU has submitted to EPA an unresolved force majeure claim or intends to submit a force majeure claim pursuant to Section XII (Force Majeure) of this Consent Decree; and
  4. A description of each noncompliance for which KU has submitted to EPA an unresolved request for, or intends to submit a request for, discretionary waiver of stipulated penalties pursuant to Paragraph 41 of this Consent Decree.
26. Violation Reports. If KU violates, or has reason to believe it may violate, any requirement of this Consent Decree or of any state or federal permit issued to the E.W. Brown Generating Station pursuant to the CWA, KU shall notify the United States of such violation and its likely duration in writing within 15 Days of the date KU first becomes aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, and/or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, KU shall include a statement to that effect in the report. KU shall investigate to determine the cause of the violation and then shall submit an amendment to the report, including a full explanation of the cause of the violation, within 30 Days of the date KU becomes aware of the cause of the violation. Nothing in this Paragraph relieves Defendant of its obligation to provide the requisite notice for purposes of Section XII (Force Majeure).

27. Spill Reports. Any responsible corporate official identified in the E.W. Brown Generating Station Spill Prevention, Control and Countermeasures Plan, as soon as he has knowledge of any discharge of oil or a hazardous substance into the navigable waters of the United States or adjoining shorelines, shall immediately notify the appropriate Federal Agency, as required by law. In instances of spills of oil or hazardous substances to the waters of the United States, the appropriate contact is the National Response Center at 1 (800) 424-8802.

28. All reports described in Paragraphs 25 and 26 shall be submitted to the persons designated in Section XV of this Consent Decree (Notices).

29. Certifications. Whenever this Consent Decree or its Appendix requires KU to certify a report or any other submission of information, KU shall submit the following written statement with the submission, signed by a responsible corporate official:

“I certify under penalty of law that this submission was prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. I further certify under penalty of law that, to the best of my knowledge, based on my reasonable inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

**IX. SITE ACCESS**

30. From the date of KU's signature on this Consent Decree until its termination date as described in Section XXII (Termination), KU agrees to provide EPA and its contractors, and all persons performing actions at the direction of EPA, prompt access at all reasonable times to the E.W. Brown Generating Station, E.W. Brown Generating Station employees, and all property on which the E.W. Brown Generating Station is located, for the purposes of conducting any activity related to this Consent Decree including, but not limited to, assessing, monitoring, or verifying compliance with the terms of this Consent Decree, and verifying any data or information submitted by KU pursuant to this Consent Decree. Such persons shall comply with the reasonable safety requirements established by KU for all visitors to the E.W. Brown Generating Station.

31. Notwithstanding any provisions of this Consent Decree, the United States retains all of its access authorities and rights, including enforcement authorities related thereto, pursuant to the CWA and any other applicable statutes or regulations.

**X. STIPULATED PENALTIES**

32. KU shall be liable to the United States for stipulated penalties in the amounts set forth in Paragraphs 33, 34, and 35 for failure to comply with the requirements of this Consent Decree, unless excused pursuant to Section XII (Force Majeure).

"Noncompliance" by KU shall include failure to complete the requirements of this Consent Decree within the time allowed in the Decree in accordance with all applicable requirements of law.



33. The following stipulated penalties shall accrue per noncompliance per day for any noncompliance identified in Subparagraphs a-d below:

Penalty Per Noncompliance	Period of Noncompliance
\$500 per day or portion thereof	1st through 15th day
\$1,250 per day or portion thereof	16th through 30th day
\$2,500 per day or portion thereof	31st day and beyond

- a. Failure to timely pay civil penalties in accordance with the terms of Section VII (Payment of Civil Penalties).
- b. Failure to comply with the requirements in Section VI and the Appendix.
- c. Failure to comply with the requirements in Paragraph 5.
- d. Failure to comply with the requirements in Paragraph 21.

34. The following stipulated penalties shall accrue per noncompliance per day for any failure to comply with the reporting requirements specified in Section VI (Supplemental Environmental Project), Section VIII (Reporting Requirements), and in the Appendix:

Penalty Per Noncompliance	Period of Noncompliance
\$250 per day or portion thereof	1st through 15th day
\$500 per day or portion thereof	16th through 30th day
\$1,250 per day or portion thereof	31st day and beyond

35. SEP Compliance.

- a. In all cases, if KU has spent less than the amount set forth in Paragraph 15 above to install the SEP, KU shall pay a stipulated penalty equal to the difference

between the amount of total eligible SEP installation costs incurred by KU and the amount set forth in Paragraph 15 to install the SEP.

b. If over the 10 years from the date of completion of the installation phase of the SEP, KU has spent less than the total amount set forth in Paragraph 15 to maintain the SEP (i.e., \$40,000 on an annualized basis, for a total amount of \$400,000 by the end of the tenth year), KU shall pay a stipulated penalty equal to the difference between the amount of total eligible SEP maintenance costs incurred by KU and the total amount set forth in Paragraph 15 to maintain the SEP.

c. If KU has completed the installation of the SEP, but has not made satisfactory completion of the SEP in accordance with all specifications for the project as described in the Appendix, KU shall pay \$248,539, in addition to any penalty required under Subparagraph a, above.

d. If KU halts or abandons work on the installation phase of the SEP, KU shall pay a stipulated penalty of \$248,539, in addition to any penalty required under Subparagraph a, above.

e. If KU fails to conduct the maintenance activities described in the Appendix and Exhibit 2, KU shall pay a stipulated penalty of \$50,000, in addition to any penalty required under Subparagraph b, above.

36. All stipulated penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Nothing

herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

37. KU shall pay any Stipulated Penalty within 30 Days of receiving the United States' written demand.

38. Penalties shall continue to accrue, as provided in Paragraph 36 of this Consent Decree, during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within 20 Days of the date of the agreement or EPA's decision;

b. If the dispute is appealed to this Court, and the United States prevails in whole or in part, KU shall pay all accrued penalties determined by the Court to be owed to EPA within 60 Days of the date of the Court's decision or order, except as provided in Subparagraph c below;

c. If the District Court's decision is appealed by either Party, KU shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within 60 Days of the date of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 30 days. Within 20 Days of the date of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to KU to the extent that they prevail.

39. The payment of stipulated penalties shall not affect KU's obligation to satisfy all of the requirements of this Consent Decree.

40. Nothing in this Consent Decree shall be construed as limiting the ability of the United States to seek any other remedies or sanctions available by virtue of KU's failure to comply with the requirements of this Consent Decree or any applicable statutes or regulations.

41. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree.

#### **XI. PAYMENT AND RELATED MATTERS**

42. KU shall make the payment described in Section VII (Payment of Civil Penalties) by Fedwire Electronic Funds Transfer (EFT) to the United States Department of Justice, in accordance with current EFT procedures and instructions provided to KU by the Office of the United States Attorney for the Eastern District of Kentucky. The payment shall reference the Civil Action Number assigned to this case and DOJ Number 90-5-1-1-07915, and shall specify that the payment is made toward CWA civil penalties to be deposited into the Oil Spill Liability Trust Fund pursuant to 33 U.S.C. § 1321(s), § 4304 of Pub. L. No. 101-380, and 26 U.S.C. § 9509(b)(8). Any funds received after 11:00 a.m. Eastern Time shall be credited on the next business day. KU shall submit to the United States, as provided in Section XIV (Notices and Submissions), notice of the payment made pursuant to this Paragraph within 10 Days of the date of the payment.

43. KU shall make the payments described in Section X (Stipulated Penalties) by EFT to the United States Department of Justice, in accordance with current EFT procedures and instructions provided to KU by the Office of the United States Attorney for the

Eastern District of Kentucky. The payments shall reference the Civil Action Number assigned to this case and DOJ Number 90-5-1-1-07915, and shall specify that the payments are for stipulated penalties to be deposited into the United States Treasury pursuant to 31 U.S.C. § 3302. Any funds received after 11:00 a.m. Eastern Time shall be credited on the next business day. KU shall submit to the United States, as provided in Section XIV (Notices and Submissions), notice of all payments made pursuant to this Paragraph within 10 Days of the date of the payment.

44. If KU fails to timely make any payment required pursuant to Section VII (Payment of Civil Penalties) or Section X (Stipulated Penalties), then, commencing on the Day after payment is due, KU shall be liable to the United States for interest on the unpaid balance at the composite prime rate computed by, and published in the Wall Street Journal on the date that payment was due, and any costs of enforcement and collection incurred pursuant to the Federal Debt Collection Procedure Act, 28 U.S.C. § 3001 et seq.

45. The United States shall be deemed a judgment creditor for purposes of collection of any penalties, interest, and expenses of enforcement and collection pursuant to this Consent Decree. KU specifically acknowledges that, pursuant to 26 U.S.C. § 162(f), penalty payments made pursuant to Sections VII (Payment of Civil Penalties) and X (Stipulated Penalties) of this Consent Decree shall not be deductible for federal tax purposes.

## **XII. FORCE MAJEURE**

46. KU's obligation to comply with the requirements of this Decree shall only be deferred to the extent and for the duration that the delay is caused by force majeure.

“Force majeure,” for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of KU, or of any entity controlled by KU, that delays or prevents the performance of any obligation pursuant to this Consent Decree despite KU’s best efforts to fulfill the obligation. The requirement that KU exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential force majeure event and best efforts to anticipate and address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that any delay is avoided or minimized to the greatest extent possible. “Force majeure” does not include financial inability to perform an obligation required by this Consent Decree.

47. If any event occurs or has occurred that may delay the performance of any obligation pursuant to this Consent Decree, whether or not caused by a force majeure event, KU shall notify orally the Section Chief, North Enforcement and Compliance Section, RCRA Enforcement and Compliance Branch, EPA Region 4, or his designee if EPA gives notice of a designee pursuant to Paragraph 62 (“North Section Chief”), as soon as possible but not later than 72 hours after the time KU first knew or in the exercise of reasonable diligence under the circumstances should have known, that the event might cause a delay. Such oral notification will be deemed given by speaking to the North Section Chief or his designee over the telephone, or by leaving a telephone message, at the number (404) 562-8649. Within 30 Days thereafter, KU shall provide a written notice to EPA explaining the reasons for the delay, the anticipated duration of the delay, all actions taken or planned to prevent or minimize the delay, a proposed schedule for implementation of any measures planned to prevent or mitigate the delay or the effect of

the delay, and KU's rationale for attributing such delay to a force majeure event if KU intends to assert such a claim. KU shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure event, which KU may supplement as additional documentation becomes available. Failure to provide written notice to EPA within 30 Days containing the required information, and including all available documentation, shall preclude KU from asserting any claim of force majeure for that event. EPA's ERU Manager may, in his unreviewable discretion, waive the procedural requirements of this Paragraph. KU shall be deemed to know of any circumstance of which KU, or any entity controlled by KU, knew or should have known.

48. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, EPA will extend the time for performance of the obligations pursuant to this Consent Decree that are affected by the force majeure event for such time as EPA deems necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify KU in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event. Any extension of time pursuant to this Section shall not be valid unless the extension of time is confirmed in writing as provided in this Paragraph.

49. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify KU in writing of EPA's decision to reject KU's force majeure claim.

50. The dispute resolution procedures in Section XIII (Dispute Resolution) shall apply to any dispute regarding EPA's decision regarding a force majeure claim that KU asserts pursuant to Paragraph 47 of this Consent Decree. If KU elects to invoke the dispute resolution procedures in Section XIII, it shall do so no later than 20 Days from the date of EPA's written decision regarding a force majeure claim pursuant to Paragraph 49 of this Consent Decree.

### **XIII. DISPUTE RESOLUTION**

51. The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under, or with respect to, this Consent Decree. The procedures set forth in this Section, however, shall not apply to actions by the United States to enforce obligations of KU that KU has not timely disputed in accordance with this Section.

52. Informal Dispute Resolution. Any dispute subject to dispute resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when KU sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 30 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding



unless, within 14 Working Days after the conclusion of the informal negotiation period, KU invokes formal dispute resolution procedures as set forth below.

53. Formal Dispute Resolution. KU shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute.

a. The Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting KU's position and any supporting documentation relied upon by KU.

b. The United States shall serve its Statement of Position within 30 Working Days of receipt of KU's Statement of Position. The United States' Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on KU, unless KU filed a motion for judicial review of the dispute in accordance with the following Subparagraph.

c. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States in accordance with Section XV of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 30 Working Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of KU's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule

within which the dispute must be resolved for orderly implementation of the Consent Decree.

d. The United States shall respond to KU's motion within the time period allowed by the Local Rules of this Court. KU may file a reply memorandum, to the extent permitted by the Local Rules.

e. In any dispute under this Paragraph, KU shall bear the burden of demonstrating that its position clearly complies with this Consent Decree and that KU is entitled to relief under applicable law. The United States reserves the right to argue that its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law.

54. The invocation of dispute resolution procedures pursuant to this Section shall not extend, postpone, or affect in any way any obligation of KU pursuant to this Consent Decree that is not directly in dispute, unless EPA agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 38 of this Consent Decree. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. If KU does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section X (Stipulated Penalties).

#### **XIV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

55. Performance of all of KU's obligations pursuant to this Consent Decree resolves the civil Claims of the United States against KU pursuant to Sections 309 and 311 of the CWA, 33 U.S.C. §§ 1319, 1321, as specifically alleged in the Complaint.

56. Nothing in this Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The United States expressly reserves any and all rights, defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Claims against any person not a Party hereto.

57. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

58. This Consent Decree does not resolve, and the United States expressly reserves claims against KU related to all other matters including, but not limited to, the following:

- a. Claims based on a failure by KU to meet a requirement of this Consent Decree;

- b. Liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

- c. Criminal liability; and

- d. Liability for any past, current, or future violation of federal or state law not resolved pursuant to Paragraph 55 of this Consent Decree.

KU expressly reserves any defenses it may have to such a claim of the United States except as provided in Paragraph 59.

59. In any subsequent administrative or judicial proceeding initiated by the United States for civil penalties or injunctive relief, KU shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, claim preclusion, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the resolution of the civil claims resolved pursuant to Paragraph 55 of this Consent Decree.

60. KU hereby covenants not to sue and agrees not to assert any claims related to the Claims, or response activities in connection with the Claims, against the United States pursuant to the CWA, OPA, or any other federal law, State law, or regulation including, but not limited to, any direct or indirect claim for reimbursement from the Oil Spill Liability Trust Fund, or pursuant to any other provision of law.

61. The United States, by consenting to the entry of this Consent Decree, does not warrant or aver in any manner that KU's complete and satisfactory compliance with this Consent Decree will constitute or result in compliance with the CWA or any other federal law or regulation, except as provided in Paragraph 55.

**XV. NOTICES AND SUBMISSIONS**

62. Whenever, pursuant to the terms of this Consent Decree and the Appendix, written notice is required to be given or a report or other document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give written notice of a change. All notices and submissions shall be considered effective on receipt, unless otherwise provided.

**AS TO THE UNITED STATES:**

**As to the United States Department of Justice:**

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
Benjamin Franklin Station  
Post Office Box 7611  
Washington, DC 20044-7611  
DOJ #90-5-1-1-07915

**As to the United States Environmental Protection Agency:**

Section Chief  
North Enforcement and Compliance Section  
RCRA Compliance and Enforcement Branch  
United States Environmental Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, SW.  
Atlanta, Georgia 30303-8960

Joan Redleaf Durbin, Esq.  
Environmental Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, SW.  
Atlanta, Georgia 30303-8960

AS TO KENTUCKY UTILITIES COMPANY:

Jeffrey Fraley  
E.W. Brown Generating Station  
815 Dix Dam Road  
Harrodsburg, Kentucky 40330

Robert J. Ehrler, Esq., Senior Counsel  
LG&E  
220 West Main Street  
Louisville, Kentucky 40232

Dennis J. Conniff, Esq.  
Frost Brown Todd, LLC  
400 West Market Street, 32nd Floor  
Louisville, Kentucky 40202

**XVI. RECORD RETENTION/ACCESS TO INFORMATION**

63. In addition to complying with any record-keeping requirements pursuant to applicable law and regulations, regardless of any contrary corporate retention policy, KU shall preserve and retain, during the pendency of this Consent Decree and for a minimum of 8 years after termination of this Consent Decree, all records, documents and information in the possession, custody, or control of KU, or which come into KU's possession, custody, or control, that relate to (1) the Claims; (2) repairs, modifications, or maintenance related to the SEP; or (3) implementation of this Consent Decree, including without limitation, reports, correspondence, data, or other documents or information related to the work performed pursuant to Section VI (Supplemental Environmental Project) and the Appendix.

64. At any time prior to termination of this Consent Decree, and for 5 years thereafter, KU shall provide to the United States, within 30 Days of the date of a request, all

documents and information responsive to the request, within the possession, custody, or control of KU, described in the preceding paragraph.

65. KU may assert business confidentiality claims covering part or all of the documents or information provided to the United States pursuant to this Consent Decree to the extent authorized by, and in accordance with, 40 C.F.R. Part 2. Documents or information that EPA determines to be confidential will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified KU that the documents or information are not confidential pursuant to applicable law, the public may be given access to such documents or information without further notice to KU.

66. KU may assert that certain documents, records and other information are privileged pursuant to the attorney-client privilege or any other privilege recognized by federal law. If KU asserts such a privilege instead of providing documents, it shall provide the United States with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by KU. Nevertheless, no documents, reports, or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged, nor shall any claim of confidentiality be made with respect to such documents, reports, or information. If a

claim of privilege applies only to a portion of a document, the document shall be provided to the United States in redacted form to mask the privileged information only.

67. Nothing in this Consent Decree shall limit the access and information-gathering authorities and rights of the United States pursuant to any federal law or regulation, including without limitation, related enforcement authorities pursuant to the CWA and OPA.

#### **XVII. RETENTION OF JURISDICTION**

68. This Consent Decree shall be considered an enforceable judgment for purposes of post-judgment collection in accordance with the provisions of the Consent Decree, Rule 69 of the Federal Rules of Civil Procedure, and other applicable federal statutory authority.

69. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Parties for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling either of the Parties to apply to this Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XIII (Dispute Resolution).

#### **XVIII. MODIFICATION**

70. Modifications to the schedules for completion of injunctive relief pursuant to this Consent Decree may be made without consent of the Court by written agreement between KU and EPA. Except as provided in the preceding sentence, no material modifications



shall be made to this Consent Decree without written notification to and written approval by the United States, KU, and the Court. Modifications that do not materially alter KU's obligations pursuant to this Consent Decree may be made without consent of the Court by written agreement between the Parties.

**XIX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

71. This Consent Decree shall be lodged with the Court for a period of at least 30 days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent to the Consent Decree if the United States becomes aware of facts or considerations that indicate to the United States that the Consent Decree is inappropriate, improper, or inadequate. KU agrees not to oppose entry of this Consent Decree or to challenge any provision of this Consent Decree unless the United States has notified KU in writing that it no longer supports entry of the Consent Decree. KU consents to entry of this Consent Decree without further notice.

72. If for any reason the Court declines to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of this agreement shall not be used as evidence in any litigation.

**XX. EFFECTIVE DATE**

73. The effective date of this Consent Decree is that date upon which it is entered by the Court.

**XXI. INTEGRATION/APPENDIX**

74. This Consent Decree and the Appendix, and exhibits 1-3 to the Appendix, constitute the final, complete and exclusive Consent Decree and understanding between

the Parties regarding the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following Appendix and its exhibits are attached to and incorporated into this Consent Decree:

“The Appendix” or “Appendix A” is a description of the SEP KU will undertake.

Exhibit 1 - Specifications and Cost Estimates for the installation of the SEP.

Exhibit 2 - Specifications for the maintenance of the SEP.

Exhibit 3 - Timeline for Completion of the SEP.

## **XXII. TERMINATION**

75. After KU’s E.W. Brown Generating Station has maintained continuous satisfactory compliance with the requirements of the CWA, its federal and state CWA permits, and this Consent Decree for a period of two years following the completion of the installation phase of the SEP, and has paid the civil penalty and any accrued Stipulated Penalties as required by this Consent Decree, KU may serve upon the United States a Request for Termination, stating that KU has satisfied those requirements, together with all necessary supporting documentation.

76. Following receipt by the United States of KU’s Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether KU has satisfactorily complied with the requirements of Paragraph 75 of this Consent Decree. If the United States agrees that the Decree may be

terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

77. If the United States does not agree that the Decree may be terminated, KU may invoke Dispute Resolution under Section XIII of this Decree. However, KU shall not seek Dispute Resolution of any dispute, under Paragraph 52 of Section XIII, until 10 Days after service of its Request for Termination.

### **XXIII. SIGNATORIES/SERVICE**

78. The Parties' undersigned representatives certify that they are fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

79. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

80. KU agrees not to oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified KU in writing that it no longer supports entry of the Decree.

81. KU agrees to accept service of process by mail as provided in Paragraph 62 with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.



THE UNDERSIGNED PARTIES enter into this Consent Decree relating to the Claims.

FOR THE UNITED STATES OF AMERICA

\_\_\_\_\_  
W. BENJAMIN FISHEROW  
Deputy Section Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice

\_\_\_\_\_  
KATHERINE KONSCHNIK  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
Benjamin Franklin Station  
Post Office Box 7611  
Washington, D.C. 20044-7611  
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FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Date: SEP 15 2005

J. I. PALMER, JR.  
Regional Administrator, Region 4  
United States Environmental Protection Agency

Date: 9/9/05

JOAN REDLEAF DURBIN, ESQ.  
Associate Regional Counsel, Region 4  
United States Environmental Protection Agency  
61 Forsyth Street, SW.  
Atlanta, Georgia 30303-8960

Date: 9/13/05

WALKER B. SMITH  
Director  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency  
Washington, DC

Date: 9/13/05

THOMAS J. CHARLTON  
Attorney Advisor  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency  
Mail Code 2243A  
1200 Pennsylvania Ave., N.W.  
Washington, DC 20460

FOR KENTUCKY UTILITIES COMPANY:

Date: September 14, 2005

\_\_\_\_\_  
JEFFREY FRALEY  
E.W. Brown Generating Station  
815 Dix Dam Road  
Harrodsburg, Kentucky 40330

Agent Authorized to Accept Service on Behalf of KU:

DENNIS J. CONNIFF, ESQ.  
Frost Brown Todd, LLC  
400 West Market Street, 32nd Floor  
Louisville, Kentucky 40202

Counsel for Kentucky Utilities Company



# APPENDIX A

## Supplemental Environmental Project at E.W. Brown Generating Station

### 1. Introduction

Pursuant to Section VI of the Consent Decree, Kentucky Utilities (KU) is required to install two (2) full-flow oil/water separators known as Separators #3 and #4 at the above referenced facility no later than 180 days from the date a permit to construct is issued by the Kentucky Division of Water. Following completion of construction, KU shall maintain Separators #3 and #4 on a semi-annual basis, as described herein, for a period of ten (10) years.

The purpose of the new oil/water separators will be to treat all waters discharging from the existing discharge pipes for KPDES Permit No. KU0002020 outfalls 002 and 003, as well as any overflow that might come from the facility's existing Separator #1 (for Units 1 and 2) and Separator #2 (for Unit 3) during a station power outage or other catastrophic event. KU shall request the Kentucky Division of Water to modify the existing KPDES Discharge permit to move the monitoring point for discharges from outfalls 002 and 003 to the discharge point from each of the new oil/water separators. KU shall comply with the requirements of the KPDES Discharge permit at all times.

### 2. Specifications/Cost Estimates

The specifications for the installation of Separators #3 and #4, including cost estimates, are included as Exhibit 1 to this Appendix.

The specifications for the semi-annual maintenance of Separators #3 and #4, including cost estimates, are included as Exhibit 2 to this Appendix.

### 3. Time Line for Completion

KU shall complete the installation of Separators #3 and #4 no later than 180 days from the date of issuance of a construction permit by the Kentucky Division of Water. The time line for completion of installing Separators #3 and #4 is estimated to be no more than 5 months.

The Timeline for Completion of the project to install Separators #3 and #4 is included at Exhibit 3 to this Appendix.

### 4. Progress Reports

Section VIII of the Consent Decree requires KU to submit semi-annual progress reports to EPA Region 4, beginning 180 days after the Effective Date of the Decree. Progress Reports must be submitted every 180 Days thereafter until, and including, the reporting period during which the Consent Decree is terminated as defined in Section XXII. KU shall submit a progress report every 365 days thereafter until, and including, the tenth year from the date of completion of the installation phase of the SEP.

## **Supplemental Environmental Project at E.W. Brown Generating Station**

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The purpose of the new oil/water separators will be to treat all waters discharging from the existing discharge pipes for KPDES Permit No. KU0002020 outfalls 002 and 003, as well as any overflow that might come from the facility's existing Separator #1 (for Units 1 and 2) and Separator #2 (for Unit 3) during a station power outage or other catastrophic event. KU shall request the Kentucky Division of Water to modify the existing KPDES Discharge permit to move the monitoring point for discharges from outfalls 002 and 003 to the discharge point from each of the new oil/water separators. KU shall comply with the requirements of the KPDES Discharge permit at all times.

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### **3. Time Line for Completion**

KU shall complete the installation of Separators #3 and #4 no later than 180 days from the date of issuance of a construction permit by the Kentucky Division of Water. The time line for completion of installing Separators #3 and #4 is estimated to be no more than 5 months.

The Timeline for Completion of the project to install Separators #3 and #4 is included at Exhibit 3 to this Appendix.

### **4. Progress Reports**

Section VIII of the Consent Decree requires KU to submit semi-annual progress reports to EPA Region 4, beginning 180 days after the Effective Date of the Decree. Progress Reports must be submitted every 180 Days thereafter until, and including, the reporting period during which the Consent Decree is terminated as defined in Section XXII. KU shall submit a progress report every 365 days thereafter until, and including, the tenth year from the date of completion of the installation phase of the SEP.

Each Progress Report shall describe:

- a. A description of the status of the application for a permit to construct submitted to the Kentucky Division of Water;
- b. An itemized description of the activities that have been completed and the date the activity was completed in order to comply with the requirements of this Appendix;
- c. Any failure to meet the requirements of the Decree that occurred or remained unresolved at any time during the reporting period, and the reasons for any such failure to comply;
- d. A summary of all actions taken or planned to correct failures to comply with this Consent Decree during the reporting period;
- e. An itemized description of the activities that are ongoing in order to comply with the requirements of this Decree and Appendix;
- f. An estimate of the time period needed by KU to complete the remaining activities identified in the Timeline for Completion attached as Exhibit 1 to this Appendix; and
- g. The amount of stipulated penalties and interest, if any, accrued as of the last day of the reporting period as a result of noncompliance with the Consent Decree, including:
  1. a description of each noncompliance and the date noncompliance began and ended, if applicable;
  2. a summary of the calculation of the amount of the stipulated penalty for each noncompliance as of the last day of the reporting period;
  3. a description of each noncompliance for which KU has submitted to EPA an unresolved *force majeure* claim or intends to submit a *force majeure* claim pursuant to Section XII (*Force Majeure*) of this Consent Decree; and
  4. a description of each noncompliance for which KU has submitted to EPA an unresolved request for, or intends to submit a request for, discretionary waiver of stipulated penalties pursuant to Paragraph 41 of this Consent Decree.

These reports must be sent to the following contact:

Section Chief  
North Enforcement and Compliance Section  
RCRA Compliance and Enforcement Branch  
U.S. Environmental Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-3104

5. SEP Completion Report

Pursuant to Paragraph 16 of Section VI of the Consent Decree, KU is required to submit a SEP Installation Completion Report containing the following information within thirty (30) days of final completion of the installation phase of the SEP:

- a. A detailed description of the SEP as implemented;
- b. A description of any problems encountered in completing the SEP and the solutions thereto;
- c. An itemized list of all eligible SEP costs;
- d. Certification that the SEP has been fully implemented pursuant to the provisions of this Decree and in accordance with the Timeline for Completion attached as Exhibit 1 to this Appendix; and,
- e. A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollution reductions, if feasible).

The report must be sent to the following contact:

Section Chief  
North Enforcement and Compliance Section  
RCRA Compliance and Enforcement Branch  
U.S. Environmental Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-3104

## **EXHIBIT 1**

### **Specifications for the Installation of Separators #3 and #4**

#### **A. Design and Engineering**

Fuller, Mossbarger, Scott & May Engineers, Inc. ("FMSM") has been employed by Kentucky Utilities Co. to provide a project cost opinion which forms the basis for the purchase and construction costs given below. FMSM will be responsible for oil/water separator sizing, concrete tank construction specifications, site integration (to include overflow piping from the existing separators), and construction management. The functional design for the separators will be provided by a third party vendor specializing in oil/water separator design and construction. A typical specification will be similar to that provided.

##### **1. General**

The oil/water separators will be designed and fabricated in accordance with the following specifications. Rectangular tanks with features as described and designed per API #421 Design & Operation of Oil/Water Separators Manual and Stokes Law. The design will incorporate flexible flow rating capability based on application parameters.

The third party vendor will provide general tank design, internal tank dimensioning, design and internal component location/installation drawings for use in customer tank construction and assembly.

##### **2. Influent Chamber**

An influent flow chamber will ensure immediate, even flow distribution across its cross section and provide a zone in which readily settleable solids can drop out to a solids chamber.

##### **3. Oil/Water Separation Chamber**

The separation chamber is to be packed with a cross-fluted coalescing media. The media pack will be designed to create a quiescent zone, a laminar flow pattern to facilitate the impingement of oil on the media, and will provide numerous oil droplet impact sites and changes of flow direction. The media shall have a 60-degree cross-flute angle.

##### **4. Cylindrical Oil Skimmer**

The separator will include an adjustable cylindrical oil skimmer. The skimmer pipe will be designed to rotate for adjustment. The oil skimmer is to be located at the effluent end of the separation chamber. Skimmer pipe is to be constructed of

carbon steel with a coal tar epoxy coating. The skimmer pipe will be directly connected to an oil reservoir for temporary storage of skimmed product. The opposite end of the skimmer shall be supported via an adjustable steel suspension bracket to maintain skim pipe in level horizontal position. The skimmer shall have a hand operated adjusting handle to rotate the skimmer for adjustment.

**5. Effluent Weir**

The effluent end of the tank is to be provided with an adjustable, stainless steel water weir plate for installation on the concrete water baffle.

**6. Clean Water Effluent Chamber**

The cleansed water will flow under the oil retention baffle, over the water weir and into the effluent chamber. This chamber shall be provided with an exit pipe sized for the maximum anticipated flow. A sheen baffle will be provided to trap sheens within this chamber.

**7. Concrete Construction**

Tank shell, integral baffles and external structural members shall be constructed of reinforced concrete typically used for below grade tank applications. Prefabricated concrete vaulting is allowed where possible or accepted and as it fits into the design, sizing and performance requirements of the project.

**8. Piping**

Internal/external piping shall be ASTM, A-53 steel, iron, polyethylene or PVC where allowed and practical. Plastic piping shall be compatibility matched to product being separated and must withstand rigors of application.

Tank wall penetrations shall provide double seals between tank pipe and concrete. Seal material will be matched to application contaminants (Buna-N to be minimum required if seals can contact oils/fuels).

**9. Coalescing Media**

The media material of construction shall be compatibility matched to product being separated. The media shall be encased in 304 stainless steel frames with lifting lugs and removable lids to allow ease of moving media packs and disassembly/assembly. The influent end media frame(s) shall have permanently attached guide clips to attach frame(s) to wall mounted bypass prevention brackets. Each frame will be attached to its closest neighboring frame on both ends and/or sides of the frame via stainless steel attaching plates and stainless hardware. This arrangement will stop any movement or shifting of media frames once installed. The influent end media frame(s) shall be provided with a stainless steel, vertical bypass prevention plate located on top of frame on the influent end of the frame to prevent flow bypass above the frame if water flow should exceed

top of media frames.

Two (2) influent bypass prevention wall brackets will be supplied to attach media frames to tank and prevent bypass of the flow between the side of the media frames and tank wall. These brackets must extend from the bottom of the media frames to above the water line. If the tank has a v-hopper for solids collection a v-shaped media bottom support/flow bypass prevention baffle shall be provided extending from the bottom of the influent media frame to near the bottom of the v-hopper without interfering with the auger and solids movement. This baffle shall be attached and sealed to the v-hopper walls.

**10. Electrical**

The separators will be gravity-flow, with no pumps or motors, and able to operate in the event of a power failure. Electricity will be installed to provide for installation of lighting in the area of the separators. This will also allow installation of a mechanical skimmer.

**11. Warranty**

The manufacturer shall warrant its products to be free of defect in materials and workmanship for a period of one year from the date of shipment.

**12. Performance and Basis of Operation**

The separators use a gravity/coalescing design for removal of free and finely dispersed oil droplets from wastewater streams. The use of the proprietary FLOPAK, cross-corrugated, oleophilic, coalescing media provides oil removal through impingement coalescence, while allowing solids settling without plugging. The media captures fine or small oil droplets, allowing the droplets to grow in size. Once the droplets become large enough, they will float to surface and be removed.

**13. Flow Capacity**

Each separator will be constructed to accommodate for maximum flow from the cooling tower blow down, as well as intermittent flow from the emergency overflow of the existing oil water separator.



## 2. Engineering Costs

	<u>Project Manager</u>	<u>Project Engineer</u>	<u>Survey Crew</u>	<u>CADD Operator</u>	<u>Engineering Technician</u>	<u>Clerical</u>	<u>Direct Costs</u>
Project Kickoff	6	4					
Coordinate OWS Design	20	10				5	
OWS Design Subcontract	20	20					\$10,000.00
Site Surveying	1	5	30				
Civil Site Design	5	40		10			
Preparation of Construction Plans	10	40		60		4	
Preparation of Specifications	5	30				12	
Bidding Assistance	15	15					
Construction Monitoring	20				200		
<i>Subtotal Hours</i>	102	164	30	70	200	21	\$10,000.00
<i>Unit Rate</i>	\$115.00	\$75.00	\$135.00	\$55.00	\$50.00	\$45.00	
<i>Extended Costs</i>	\$11,730.00	\$12,300.00	\$4,050.00	\$3,850.00	\$10,000.00	\$945.00	\$10,000.00
<i>Total Engineering Costs</i>	\$52,875.00						
<i>20% Contingency</i>	\$10,575.00						
<i>Total</i>	\$63,450.00						
<i>Budgetary Engineering Cost Opinion</i>	\$64,000.00						

## EXHIBIT 2

### Specifications for the Annual Maintenance of Separators #3 and #4

Maintenance of the oil-water separators will be performed twice per year for a period of ten years after completion of the installation of the oil-water separators.

The first maintenance performed each year will involve the checking of the oil reservoir in each of the oil-water separators, and the removal of any oil that may have accumulated. This will involve the labor of one person and take approximately 20 hours to complete for each oil-water separator.

A second cleaning will be performed on an annual basis that will involve, in addition to the removal of any oil accumulated in the oil reservoir, the removal of the media elements from each of the oil-water separators for washing and cleaning. The elements will be cleaned with detergent and spray water. A crane will be rented to lift the media elements out of the oil-water separator to allow the washing and cleaning. When the media elements have been removed, a vacuum truck will be used to clean any accumulated oil or other dirt and sediments from the oil-water separator. It is anticipated that this will involve the labor of three persons, for approximately 40 hours for each oil-water separator. The unit cost for the labor and the rental cost for the vacuum truck and crane are set-forth in the table below.

It is anticipated that the media in each oil-water separator will have to be replaced every 10 years. For purposes of this estimate, the full replacement cost has been spread over 10 years. This estimate is based upon a current replacement cost of \$1,000.00 for each element, and assumes that one element will be replaced each year. Thus, there will be an annual cost of \$2,000.00 for replacement of 1 media element in each of the two oil-water separators. This accounts for the annual cost of \$2,000.00. Because the media will be removed and inspected on an annual basis, the labor cost described above for the annual removal and cleaning of the media elements includes the anticipated labor cost for the replacement of the media.

The estimates for the \$30.00 per hour cost of labor is based upon KU's current cost for contract labor for a general laborer.

The annual maintenance cost for each oil/water separator is summarized in the table below:

## Annual Oil/Water Separator O&M Estimate For E. W. Brown SEP

10 framed-media units/separator  
each framed-media unit costs \$1000  
Labor Rate = \$30/hr  
Rental Rate for crane/picker = \$5000/wk  
Rental Rate for Vacuum Truck = \$10,000/wk

	Number of	Cost/per	Number of		Replace	Annual
Media Replacement	Separators	Element	Elements		1/10 years	Cost
Media Replacement	2	\$1,000	10	\$20,000	\$2,000	\$2,000
Labor		Unit Cost Per Hour	Number Personnel	Hours		
Labor annual cleaning	2	\$30	3	40	\$7,200	
Semi annual cleaning	2	\$30	1	20	\$1,200	
Total Labor						\$8,400
Rental Equipment		Cost per Week	1 week Each			
Vacuum Truck	2	10000	1		\$20,000	
Crane/picker	2	5000	1		\$10,000	
						\$30,000
Total Annual O&M						\$40,400

Value used in financial model	\$40,000
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**EXHIBIT 3**

### Timelines for the Installation of Separators #3 and #4

An application for a permit to construct the oil/water separators will be submitted to the Kentucky Division of Water within thirty (30) working days of entry of the Consent Decree by the Court.

The table below shows estimated time frames and milestones for the various phases of the proposed project, following the issuance of a construction permit by the Kentucky Division of Water. Some may change slightly in duration, but the overall project should take approximately 20 weeks to execute.

## OIL SEPARATOR CONSTRUCTION TIMELINE

[illegible]